

# EXHIBIT 58

1                   UNITED STATES DISTRICT COURT  
2                   MIDDLE DISTRICT OF TENNESSEE  
3

4                   NIKKI BOLLINGER GRAE, Individually

5                   and on Behalf of All Others

6                   Similarly Situated,

7                   Plaintiff,                   Civil Action No.

8                   vs.                           3:16-cv-02267

9                   CORRECTIONS CORPORATION OF  
10                   AMERICA, ET AL.,  
11                   Defendants.

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12                   CONFIDENTIAL - PURSUANT TO PROTECTIVE ORDER

13                   VIDEOTAPED DEPOSITION OF DONNA MELLENDICK

14                   Conducted virtually via remote videoconference

15                   October 27, 2020

16                   Reported by:

17                   Misty Klapper, RMR, CRR

18                   Job No.: 10073773

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11                   AMERICA, ET AL.,

12                   Defendants.

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16  
17                   Videotaped deposition of DONNA MELLENDICK, taken on  
18                   behalf of Defendants, via Zoom remote videoconference,  
19                   beginning at 10:10 a.m. CST on Tuesday, October 27, 2020,  
20                   before Misty Klapper, RMR, CRR.

1 APPEARANCES:  
2 (ALL APPEARANCES VIA ZOOM REMOTE VIDEOCONFERENCE)  
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9  
10 ALSO PRESENT: DeSHAWN WHITE, VIDEO OPERATOR  
11 D. SCOTT DODRILL  
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1           The court reporter may now swear in  
2           or affirm the deponent.

3           MS. REPORTER: One moment.

4

5           Whereupon:

6           DONNA MELLENDICK,  
7           was called for examination, and, after being duly  
8           sworn, was examined and testified as follows:

9           MS. REPORTER: Thank you.

10           You may proceed.

11           EXAMINATION BY COUNSEL FOR DEFENDANTS

12           BY MS. TOMKOWIAK:

13           Q. Good morning, Ms. Mellendick.

14           A. Good morning.

15           Q. We -- we spoke before we went on the  
16           record, but I don't think I introduced myself.

17           So my name is Sarah Tomkowiak and I represent the  
18           defendants in this matter.

19           Have you been deposed before?

20           A. I have not.

21           Q. Okay. Well, this deposition is being  
22           taken over Zoom, so it's even more important  
23           than -- and when we're in person usually to try  
24           not to talk over each other.

25           Your counsel might also object to my

1           Q. And that's referring to your  
2       experience during the time you were at the BOP  
3       30-plus years through August 2015, correct?

4           A. You -- but you were talking about  
5       what I put in my report?

6           Q. Well, I'm talking about the  
7       experience that you drew upon in forming your  
8       opinions as they relate to the 2012-2016 time  
9       period. The experience that you're drawing upon  
10      is your experience at -- during the time that you  
11      were at the BOP; is that right?

12           A. That is right.

13           Q. Okay. I just have a couple other  
14      questions on this LinkedIn profile and then we  
15      can put it away.

16           I see under Interests that you follow  
17      the GEO Group and MTC and CoreCivic.

18           Why do you do that?

19           MR. FORGE: I'm going to object as  
20      vague as to time.

21           THE WITNESS: It's been a while.

22           Probably just kind of -- just to see  
23      what's -- what they're up to, I guess.

24           It was my -- was my career for quite  
25      a while, so --

1                   BY MS. TOMKOWIAK:

2                   Q. All right. And I see that you also  
3                   follow the ACA, the American Correctional  
4                   Association.

5                   What's that?

6                   A. American Correctional Association?

7                   Q. Um-hmm (affirmative).

8                   A. It's -- how do I describe it?

9                   Mr. Dodrill talks about it in his  
10                  report, but it's a organization that is comprised  
11                  of correctional professionals that go out and  
12                  audit correctional facilities and provide a  
13                  certification that they're meeting all the  
14                  standards that the ACA has developed.

15                  Q. Why do you or did you at one point  
16                  follow them?

17                  A. I -- throughout my career I've dealt  
18                  with ACA in my position in the program review  
19                  division, worked closely with ACA accreditations,  
20                  et cetera. And -- and I know some -- or did know  
21                  some folks that are, you know, associated with  
22                  them, so --

23                  Q. Okay. And all BOP-operated  
24                  facilities are required to maintain ACA  
25                  accreditation; is that right?

1           A. That is correct.

2           Q. And same thing is true for all  
3           privately operated facilities?

4           A. Correct.

5           Q. Okay. We are done with that exhibit,  
6           so you can close that out if you want.

7                   During the time that you worked as  
8           PMB administrator, the BOP was under contract  
9           with CCA for the housing of federal inmates in  
10           five correctional facilities; is that right?

11           A. That is right.

12           Q. And those are the facilities that you  
13           discuss in your report. They're Adams, Cibola,  
14           Eden, McRae and Northeast Ohio?

15           A. Yes.

16           Q. In your role as PMB administrator,  
17           you interacted with CCA and its employees, right?

18           A. I did.

19           Q. How frequently would you say those  
20           interactions were?

21           A. Mainly my staff were the ones that  
22           interacted with CCA employees on a regular basis,  
23           whether it be daily, weekly. I would say my  
24           interactions were probably maybe -- maybe  
25           monthly. I kind of think it depended on what was

1 going on at the time.

2 Q. And what were the nature of those  
3 interactions with CCA?

4 A. My staff's or mine?

5 Q. Yours.

6 A. Typically it would be working  
7 together to schedule partnering meetings and if  
8 there were -- we had a -- let's step back a  
9 minute.

10 So the Bureau of Prisons partnered  
11 with our private providers. We wanted to work  
12 together. We wanted our private partners to be  
13 successful in providing these inmates with  
14 confinement beds. And the partnering process  
15 involved staff at all levels in -- in my branch,  
16 in the PCC section, in the CFM section to be able  
17 to interact with one another.

18 So usually I didn't interact with  
19 anyone at CCA unless it was something that  
20 couldn't be resolved at a lower level or it was  
21 just a higher level, whether we were looking to  
22 try to organize our next partnering meeting, you  
23 know, the logistics and -- and the agenda,  
24 et cetera.

25 Q. Okay. And when it did rise to the

1           A. The same. I highly respected him.

2           Q. Now, you said that your staff also  
3           had interactions with CCA; is that right?

4           A. Yes.

5           Q. And what was -- if you -- to the  
6           extent of your knowledge, what were the nature of  
7           those interactions?

8           A. Well, in my branch I had -- I had  
9           staff in my branch that worked on-site at each of  
10           the private contract facilities. So I typically  
11           had at least two staff in my branch. And they  
12           interacted with the provider. Whether it be CCA  
13           or another company, they interacted with those  
14           staff daily. So --

15           Q. You're referring to the -- make sure  
16           I get my acronyms right, but SSIM and SOM; is  
17           that right?

18           A. That is correct.

19           Q. Okay. And those were the -- the  
20           on-site monitors that the BOP had in place at the  
21           privately operated facilities?

22           A. Yes.

23           Q. Did the -- do you know, did the BOP  
24           have any similar type of on-site monitoring at  
25           its own facilities?

1           A. The only instance I could recall that  
2        is if -- I think the BOP had at least a couple  
3        facilities in which they might have contracted  
4        services. So they may have had someone  
5        responsible for monitoring the contract.

6           Q. Okay. But as a general matter,  
7        the -- the BOP facilities did not have the same  
8        type of 24/7 on-site monitors as the privately  
9        operated facilities did?

10          A. They did not. And it -- and it  
11        wasn't 24/7. I mean, my staff worked a -- an  
12        eight-hour day. So it wasn't 24/7, yeah.

13          Q. 8/7?

14          A. Yeah.

15          Q. Got it.

16           And -- and we -- we talked a little  
17        bit about the auditing process earlier. And  
18        privately operated facilities were audited on an  
19        annual basis; is that right?

20          A. Initially when we first started back  
21        in early 2000s, it was -- CFM did a -- an audit  
22        every six months. And that eventually changed to  
23        an annual audit.

24          Q. And is it fair to say that with  
25        respect to BOP-operated facilities, they're not

1       always audited on an annual basis, depending upon  
2       the rankings that they receive?

3           A.    Are you referring to program reviews  
4       that were conducted of a discipline in a BOP  
5       facility?

6           Q.    Yes.

7           A.    Yes. So they -- it would -- it was  
8       cyclic. It would depend on -- on their last  
9       rating, whether the next program review would be  
10      a year out, two years out or three years.

11          Q.    And turning -- turning back to CCA in  
12       your role as PMB administrator, is it accurate to  
13       say that you oversaw the issuances of notices of  
14       concern, for example, to CCA?

15          A.    They were brought to my attention.

16          Q.    And what does that mean?

17          A.    I was -- I was, like, in the loop.

18          You know, my staff would inform me of what was  
19       going on. I didn't approve all of them, but I  
20       was aware of them.

21          Q.    What about with respect to  
22       deductions? What was your role in determining  
23       whether a deduction was warranted or not?

24          A.    My staff, again, just kept me  
25       informed, depending on the circumstances.

1           A. No, it would not.

2           MS. TOMKOWIAK: All right. Let's  
3           go ahead and go off the record.

4           MR. FORGE: That's fine.

5           Can I -- Misty, can I ask, is there  
6           realtime today?

7           VIDEO OPERATOR: It is 11:46 a.m.  
8           and we are now off the record.

9           (Thereupon, a brief recess was  
10           taken.)

11           VIDEO OPERATOR: Okay. The time is  
12           12:06 p.m. and we are now on the record.

13           BY MS. TOMKOWIAK:

14           Q. Ms. Mellendick, can you turn back to  
15           your report?

16           A. Um-hmm (affirmative).

17           Q. Okay. And if you look at page 3,  
18           paragraph one at the very top of that page.

19           A. Okay.

20           Q. Is that a fair summary of what you  
21           were asked to opine on in this case?

22           A. It is.

23           Q. Is it fair to say that you are not  
24           offering any opinions on CCA's performance of its  
25           contracts with the U.S. Marshals?

1           A.    Correct.  
2           Q.    Is it fair to say that you're not  
3           offering any opinions on CCA's performance of its  
4           contracts with ICE?

5           A.    Correct.  
6           Q.    Fair to say that you're not offering  
7           any opinions on CCA's performance of its  
8           contracts with any other business partner besides  
9           the BOP?

10          A.    My opinions are only based on the  
11          contracts that are listed in this report: Adams,  
12          Cibola, Eden, McRae and Northeast Ohio during the  
13          relevant time frame.

14          Q.    Did you make any effort to compare  
15          the quality of the services provided by CoreCivic  
16          relative to the quality of services provided by  
17          the BOP?

18          A.    I did not.

19          Q.    You don't intend to offer any opinion  
20          on that at trial, correct?

21          A.    I believe I stated in my report that  
22          it is not an apples-to-apples comparison.  
23          They're very different.

24          Q.    To that end, you did not conduct any  
25          analysis of the number or nature of deficiencies

1 documented at any BOP-operated facility during  
2 the relevant time period?

3                   A. I did not, because it would not have  
4                   been a true comparison.

5 (Remote transmission interference)

6 MS. REPORTER: Sorry? I'm sorry.

7 THE WITNESS: I didn't hear it  
8 either.

9 BY MS. TOMKOWIAK:

10 Q. That's not something you looked at,  
11 right?

12 A. What -- what was -- I'm sorry. You  
13 cut out and I didn't hear you, so --

14 Q. I said but -- but just to be clear,  
15 that's not something that you looked at?

16 A. I'm not sure -- what was it --

17 Q. I think you answered it before and  
18 I -- I just wanted to be clear.

19 You said you did not conduct any  
20 analysis of the number or nature of deficiencies  
21 documented at any BOP-operated facility during  
22 the relevant time period, right?

23 A. Correct.

24 MR. FORGE: Hold on.

1 the opinions you intend to offer in this case?

2 A. It is.

3 Q. What -- what do you mean by the  
4 majority?

5 A. I meant that three of the five CCA  
6 facilities were not performing.

7 Q. Okay. And is it your opinion that  
8 those three facilities -- and are you referring  
9 to Adams, Cibola and Eden?

10 A. I am.

11 Q. Is it your opinion that their  
12 performance was largely deficient for the entire  
13 relevant time frame of the case?

14 A. For the entire period, not all three  
15 of them, no.

16 Q. Okay.

17 A. But --

18 (Crosstalk)

19 Q. And --

20 A. -- a large portion of the relevant  
21 time frame.

22 Q. And just -- just help me understand  
23 that.

24 So for which -- which one of those  
25 facilities would you say their performance was

1 not largely deficient for the entire relevant  
2 time frame?

3 MR. FORGE: Object as to --

4 THE WITNESS: I would --

5 MR. FORGE: -- form.

6 THE WITNESS: I would say Eden.

7 Eden started to show a decline a little  
8 bit later on into the relevant time  
9 period.

10 BY MS. TOMKOWIAK:

11 Q. Okay. And -- and we can -- we can  
12 look at your report.

13 On -- on page 18 I think you actually  
14 say that Eden had achieved above satisfactory  
15 performance levels for 2012 through early 2014.  
16 That's on page 18.

17 Do you agree with that?

18 A. Yes.

19 Q. And so with respect to the other two  
20 facilities, McRae and Northeast Ohio, you found  
21 CCA's performance to be well above satisfactory;  
22 is that right?

23 A. That is correct.

24 Q. And, in fact, the -- the BOP still  
25 has a contract with CCA with respect to the McRae

1 facility today; is that right?

2 A. Yes.

3 Q. Going back to your opinion, what does  
4 largely deficient mean?

5 A. Among those three facilities, they  
6 had numerous and serious and repetitive  
7 deficiencies.

8 Q. And when you say numerous, is there a  
9 specific quantitative benchmark that you're  
10 referring to?

11 A. Just looking at their specific  
12 reports in any given area, depending on which  
13 report it was, you know, across that time frame.  
14 But, no, I didn't have a minimal number in mind,  
15 if that's what you're asking.

16 Q. Yeah. So there's no threshold number  
17 of deficiencies that you would say is required  
18 before a performance becomes largely deficient?

19 A. Can you ask that one more time?

20 Q. Sure.

21 There's no threshold number of  
22 deficiencies, in your opinion, required before a  
23 contractor's performance becomes largely  
24 deficient?

25 A. No --

1       deaths. So we were seeing that deficiency  
2       repeated amongst their facilities. So --

3           Q. Okay. And you say on page 23 that  
4       The CAR XV awards in late 2014 concretely  
5       determined that -- or I'm sorry -- concretely  
6       determined the BOP would not grant CCA a new  
7       contract based on their poor past performance.

8           So the CAR XV poor selection decision  
9       was signed by the BOP on December 29, 2014.

10          Is -- is that the -- the date by which the -- it  
11       was concretely determined that the BOP would not  
12       award CCA a new contract?

13          A. Yes, in my opinion.

14          Q. Okay. So when you say late 2014 by  
15       referring to the CAR XV awards, you mean by  
16       December 29, 2014; is that right?

17          A. I don't disagree with that statement.

18          Yeah, that's fine.

19          Q. Okay. What do you mean by concretely  
20       determined?

21          A. Well, it was spelled out in the

██  
██  
██  
██

4                   That award -- I mean, it was -- CCA  
5                   lost a very well-running facility, their  
6                   Northeast Ohio facility. They actually bid that

9                   another provider. So in my mind, that spoke  
10                   volumes.

11                  Q. And you weren't involved in that  
12                   decision, correct?

13                  A. I was not.

14                  Q. And so -- and your opinion is based  
15                   on your review of the source selection document?

16                  A. Based on the -- my review of the  
17                   source selection document and just my experience  
18                   in general in the position I was in.

19                  Q. And so by concretely determined,  
20                   are -- you're saying that the BOP did not grant  
21                   CCA the CAR XV award on that date; is that right?

22                  A. Correct.

23                  Q. So I just want to be clear. You're  
24                   not speaking as you were in April 2013 about  
25                   hypothetical contracts that CCA may or may not

1 get in the future, you were just referring to the  
2 CAR XV award; is that right?

3 MR. FORGE: Object --

4 THE WITNESS: I was --

5 MR. FORGE: -- as to form.

6 THE WITNESS: I was referring to  
7 the CAR XV award.

8 BY MS. TOMKOWIAK:

9 Q. As of December 29, 2014, do you have  
10 any opinion regarding how likely or not it would  
11 have been for the BOP to award a different new  
12 contract to CCA?

13 MR. FORGE: Object as to form.

14 THE WITNESS: Yeah, I'm not -- I'm  
15 not sure I understood that question.

16 Could you repeat it?

17 BY MS. TOMKOWIAK:

18 Q. Sure.

19 Do you have an opinion as to any  
20 point after December 29, 2014 as to how likely or  
21 not the BOP was to award CCA a new contract?

22 MR. FORGE: Object as to form.

23 THE WITNESS: I would think it  
24 would depend on what period of time, but  
25 what I think does speak volumes is the

1 fact that the bureau has awarded since  
2 that time another 15 -- more than 15,000  
3 bids and CCA has not won a competitively  
4 bidden contract with the Bureau of Prisons  
5 in nine years. I believe 2011 was the  
6 last time they won one.

7 BY MS. TOMKOWIAK:

8 Q. Are you speaking just with respect to  
9 low security correctional facilities or are --  
10 you're -- you're speaking about all type of  
11 facilities?

12 A. I'm speaking in regards to these CAR  
13 facilities.

14 Q. Okay. Well, what I'm -- I guess what  
15 I'm trying to understand is let's look at the  
16 relevant time period.

17 From December 29, 2014 to August  
18 2016, do you have any opinion during that time  
19 frame how likely or not it was for the BOP to  
20 award CCA with a new contract?

21 MR. FORGE: Object as to form.

22 THE WITNESS: I believe it would  
23 have been unlikely for the BOP to award to  
24 CCA during that time frame.

25

1                   BY MS. TOMKOWIAK:

2           Q.    So in your opinion, at -- at no point  
3           after the CAR XV awards was it possible for CCA  
4           to turn their performance around?

5           MR. FORGE: Object as to form.

6           THE WITNESS: No, I'm not saying  
7           that.

8                   BY MS. TOMKOWIAK:

9           Q.    Okay. Well, in your opinion, could  
10          CCA have turned things around at some point after  
11          the CAR XV awards?

12           MR. FORGE: Object as to form.

13           THE WITNESS: We hoped that CCA  
14          would have turned things around at any  
15          time.

16                   BY MS. TOMKOWIAK:

17           Q.    You mention in your report the -- the  
18          cure notice that was issued to the -- to Cibola  
19          in 2015.

20                  Do you recall that?

21           A.    I do.

22           Q.    And you're aware that CCA  
23          successfully responded to that cure notice and  
24          that it was lifted a -- a few months later?

25                  Is that a fair summary?

1                   MR. FORGE: Object as to form.

2                   THE WITNESS: I recall that it was  
3                   lifted because they corrected the majority  
4                   of the issues that were outlined in the  
5                   cure notice.

6                   BY MS. TOMKOWIAK:

7                   Q. And at that point in time, was it --  
8                   was the BOP more or less likely to award CCA a  
9                   new contract?

10                  MR. FORGE: Object as to form.

11                  THE WITNESS: I would have to  
12                  reanalyze all of the performance  
13                  information amongst their facilities to  
14                  provide an opinion on that.

15                  BY MS. TOMKOWIAK:

16                  Q. Well, if that's the case, if I asked  
17                  you how likely it was for the BOP to -- for the  
18                  BOP to award CCA a new contract at any point  
19                  during the period of December 2014 to August  
20                  2016, is it your testimony that you would have to  
21                  look at the performance documentation at that  
22                  particular point in time in order to be able to  
23                  render an opinion on that?

24                  MR. FORGE: Object as to form.

25                  THE WITNESS: I would have to

1 rereview my notes to offer an opinion on  
2 that.

3 BY MS. TOMKOWIAK:

4 Q. Okay. So your opinion might change  
5 based on the specific date and time that you were  
6 asked to opine on?

7 MR. FORGE: Object --

8 THE WITNESS: It --

9 MR. FORGE: -- as to form.

10 THE WITNESS: -- it -- it may. But  
11 what stands out in my mind is that there  
12 were subsequent competitively bid  
13 contracts and CCA did not receive any of  
14 them.

15 BY MS. TOMKOWIAK:

16 Q. To your knowledge, did anybody at the  
17 BOP tell CCA after December 2014 that it was  
18 unlikely that they would win any new contract  
19 with the BOP?

20 A. Not to my knowledge.

21 Q. You mentioned that you -- this  
22 opinion is based on the source selection  
23 decision -- or I should say at least in part on  
24 the source selection decision; is that right?

25 A. Can you refresh my -- refresh me on

1 which opinion you -- you're referencing or  
2 what --

3 Q. Your second -- your second opinion  
4 relating to the CAR XV award.

5 A. It is based on the source selection  
6 decision. It is based on my review of all of the  
7 documents for this relevant time period. It's  
8 based on my recollection of their performance in  
9 my capacity as PMB administrator.

10 Q. And -- and you're aware, based on  
11 your review of all those materials and your  
12 experience, that past performance was not the  
13 only non-price consideration in CAR XV?

A bar chart illustrating the distribution of 1000 samples across 10 categories. The x-axis is labeled with integers from 1 to 10, representing the categories. The y-axis represents the frequency of samples. The distribution is highly right-skewed, with the most frequent category (category 6) having approximately 350 samples, and the least frequent category (category 9) having 10 samples. The other categories fall in between, with category 1 having the second-highest frequency of approximately 250 samples.

Category	Frequency
1	250
2	100
3	100
4	100
5	100
6	350
7	100
8	100
9	10
10	100

25 Q. Did you consider that in forming your

1 opinion?

2                   A. I relied on -- mainly for that  
3                   opinion was the main reason that the source  
4                   selection official said that CCA did not receive

7 that is where the weight was, in my opinion.

8                   Q.    In your opinion, was the ranking of  
9                   CCA's past performance as poor consistent with  
10                  the ratings that it had received in the CPARS  
11                  during the time period being evaluated?

12                   A. I don't know that you can compare the  
13                   two.

14 Q. Well -- and we can -- we can look at  
15 it if you'd like, but just in the interest of  
16 time, I mean, the source selection document  
17 itself goes through all of the ratings in the --  
18 the CPARS. You saw the categories in the CPARS.  
19 So I'm just interested if you know -- sitting  
20 here today if you recall -- you said you reviewed  
21 the CPARS, correct?

22 A. Um-hmm (affirmative). That's  
23 correct.

24 Q. And you -- okay. And you've reviewed  
25 the source selection document?

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## CERTIFICATE OF NOTARY

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I, MISTY KLAPPER, the officer before  
whom the foregoing deposition was taken, do  
hereby certify that the witness whose  
testimony appears in the foregoing  
deposition was duly sworn by me; that the  
testimony of said witness was taken by me in  
shorthand and thereafter reduced to  
typewriting by me; that said deposition is a  
true record of the testimony given by said  
witness; that I am neither counsel for,  
related to, nor employed by any of the  
parties to the action in which this  
deposition was taken; and, further, that I  
am not a relative or employee of any  
attorney or counsel employed by the parties  
hereto, nor financially or otherwise  
interested in the outcome of this action.

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Further, that if the foregoing pertains to  
the original transcript of a deposition in a federal  
case, before completion of the proceedings, review  
of the transcript [ X ] was [ ] was not requested.

Dated: November 3, 2020



Misty Klapper, RMR, CRR  
and Notary Public